**National Tribal Air Association Template Letter on the U. S. EPA’s Supplemental Rule for the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Primary Copper Smelters**

NOTE: *The NTAA recommends that you begin your comment letter with introductory remarks*

*regarding the signatory’s position within the Tribe. The more individualized the letter, the greater its potential impact. Feel free to add your own arguments or specific stories that will make it educational for the EPA. Be sure to replace the highlighted text with your own text.*

The comment deadline is **August 23, 2023.**

This proposed supplemental rule for the National Emission Standard for Hazardous Air Pollutants (NESHAP) was finalized in 2022 to reduce emissions and unacceptable risks for people living around two primary copper smelters.

Native Americans and Hispanics disproportionately are impacted by these sources. The rule applies only to facilities that are large enough to be classified as a “major source” of hazardous air pollutants, as a result this rule will not affect the Kennecott primary copper smelter in Utah but does affect the Freeport facility in Miami, Arizona and the Asarco facility in Hayden, Arizona. Tribes who may be directly impacted include but are no limited too:

* Gila River Indian Community
* San Carlos Apache
* Tohono O’odham
* Tonto Apache
* White Mountain Apache

The principal pollutants of concern for this rule are lead, Arsenic and mercury. Because of the mercury emissions and the fact that mercury can be transported, Tribes with concerns about protecting hunting and fishing rights and other lifeways may also want to comment on this rule.

To the extent that these air pollution issues affect your Tribe, please include specific concerns.

Your comment letter can be submitted electronically to the Federal Rulemaking Portal. Go to <https://www.regulations.gov/> and follow the online instructions for submitting comments. o Send comments by email to: a-and-r-docket@epa.gov Attention Docket ID No. EPA-HQ-OAR-2020-0430.

[DATE]

US Environmental Protection Agency

EPA Docket Center (EPA/DC)

Docket ID No. EPA-HQ-OAR-2020-0430

1200 Pennsylvania Avenue NW

Washington, DC 20460

RE: Comments from the **[INSERT TRIBE’S NAME HERE]** on EPA’s Supplemental Proposal for National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting

Manufacture: Docket ID No. EPA-HQ-OAR-2023-0430

The **[INSERT TRIBE’S NAME HERE]** is pleased to submit these comments and

recommendations regarding the U.S. Environmental Protection Agency’s (EPA’s) Supplemental Proposed National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting

Manufacture: Docket ID No. EPA-HQ-OAR-2023-0430 as published in July 2023.

It is important to note that even though the [if you are a Tribe near one of these sources use or modify the following language **[INSERT TRIBE’S NAME HERE]** is located near **[list either ASARCO or Freeport[[1]](#footnote-1)]** and thus can have significant impact on the health of our citizens.] [If you are a Tribe concerned with mercury emissions please use or modify the following language **[INSERT TRIBE’S NAME HERE]** is not located near either of these affected sources. However, considering the significant level of mercury emissions from these sources, this rule will be of interest to our Tribe because mercury can be transported over great distances, mercury impacts traditional treaty rights and lifeways of Tribes across the nation.]

The EPA’s demographic analysis demonstrates the disproportionate impact of these rules on Native Americans. As such, **[INSERT TRIBE’S NAME HERE]** strongly encourages taking a proactive approach to providing consultation on this important rule.

**[INSERT TRIBE’S NAME HERE]** appreciates this as a supplemental proposal to the 2022 NESHAP, addressing nonregulated Hazardous Air Pollutants (HAPs) specifically, Dioxin and Furans, Benzene, Toluene, Naphthalene, as well as additional data and comments provided by the Freeport facility. In reviewing this proposal **[INSERT TRIBE’S NAME HERE]** has the following comments:

1. **[INSERT TRIBE’S NAME HERE]** questions the approach used to look at the Beyond the Floor (BTF) cost of controls for the nonregulated pollutants and mercury. By taking a pollutant-by-pollutant approach to assessing the cost per ton of pollution, the EPA’s approach makes the cost assessment very high. For example, the BTF control options for Benzene, PAH and Naphthalene, and Dioxin and Furans were all the addition of Active Carbon Injection in addition to the existing control devices. So, the capital outlay and operational cost should include the TPY reduction of all three pollutants instead of looking at the cost per ton for each one individually. Similarly, the BTF controls for Hydrogen Chloride and Chlorine is dry sorbent injection so one control will address both pollutants. **[INSERT TRIBE’S NAME HERE]** appreciates that the EPA has Maximum Achievable Control Technology (MACT) floor requirements for these pollutants results in additional monitoring and record keeping, however, **[INSERT TRIBE’S NAME HERE]** encourages the EPA to reconsider the BTF options to provide additional controls for these pollutants.
2. **[INSERT TRIBE’S NAME HERE]** understands that the risk drivers for this source category are toxic metals, particularly lead and arsenic. The roof vent requirements were established to address that risk. The 2022 rule required Freeport to address the roof vent emissions and required a capture system including, hoods, ducts, fans, and a baghouse. **[INSERT TRIBE’S NAME HERE]** is concerned that the EPA accepted the comment from Freeport to reduce the stringency of the controls for the pollutants that are the risk drivers. Specifically, the EPA accepted the industry’s proposal for a single emission limit instead of the three separate emission limits for the three roofline emission points. The EPA asserts that this emission limit achieves more pollution reduction. However, the **[INSERT TRIBE’S NAME HERE]** is concerned that this undermines the enforceability of the emission limits. Emission averaging scenarios often do not achieve the anticipated emissions reduction. In providing flexibility on source operations, sufficient monitoring, recordkeeping, and reporting are often not provided to ensure that the combined limit is met.
3. The EPA proposed two options to address the control requirement for Aisle Scrubber. Option 1 would result in greater emissions reduction. Given that **[INSERT TRIBE’S NAME HERE]** is directly impacted by **[list either ASARCO or Freeport]** and our community is already disproportionately impacted, providing that additional risk reduction can help address the existing disproportionate impact more effectively.
4. **[INSERT TRIBE’S NAME HERE]** agrees that Particulate Matter (PM) is not an appropriate surrogate for mercury and thus agrees on emission limits for mercury are appropriate. Since the MACT floor emission limit does not require additional controls, the **[INSERT TRIBE’S NAME HERE]** suggests that the EPA adopt the BTF standard for mercury. Given mercury produces both local and national impacts it is important to limit mercury emissions as much as possible to address local and national health risk and to protect Tribal treaty rights and lifeways.
5. **[INSERT TRIBE’S NAME HERE]** supports the proposal to not allow facilities to use the bypass stacks that circumvent control devices.
6. **[INSERT TRIBE’S NAME HERE]** understands the EPA’s assertion that fenceline monitoring is not appropriate for this source category given that rooftop emissions would not be measured at the fenceline. However, the NTAA suggests that the Agency consider community monitoring similar to those proposed in the Ethelene Oxide Sterilizer Rule[[2]](#footnote-2). Given the risk drivers from these facilities are HAP metals they tend to deposit within a few miles of the facility so community scale monitoring can ensure the surrounding community are protected.

In Conclusion, the **[INSERT TRIBE’S NAME HERE]** appreciates this opportunity to comment on the supplemental proposed the rule regarding National Emission Standards for Hazardous Air

Pollutants: Primary Copper Smelters. With these comments we support the proposed rule and its potential to reduce the many harmful impacts of the toxic metals, mercury and other air toxics from these manufacturing facilities.

Signature

1. There are two facilities (Asarco and Freeport—both located in Arizona). The Asarco facility is in Hayden Arizona, the Freeport facility is in Miami Arizona. Federal Register / Vol. 88, No. 140 / Monday, July 24, 2023 / Proposed Rules 47419 [↑](#footnote-ref-1)
2. EPA-HQ-OAR-2019-0178 FRL-7055-03-OAR [↑](#footnote-ref-2)